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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/566,965	08/19/2006	Christophe Dumousseaux	09354.0009	9332
22852	7590	10/29/2007		
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			EXAMINER LAMM, MARINA	
			ART UNIT 1617	PAPER NUMBER
			MAIL DATE 10/29/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/566,965	<b>Applicant(s)</b> DUMOUSSEAU ET AL.	
	<b>Examiner</b> Marina Lamm	<b>Art Unit</b> 1617	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/17/06</u> . | 6) <input type="checkbox"/> Other: ____.  |

### **DETAILED ACTION**

Claims 1-14 are pending in this application filed 8/19/06, which is a 371 application of PCT/JP04/11626 filed 8/5/04, which claims priority to foreign application filed 8/5/03 in Japan.

#### ***Claim Objections***

1. Claims 4, 8-11 and 13 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from any other multiple dependent claim. See MPEP § 608.01(n). Accordingly, for the purpose of examination, Claims 4, 8-11 and 13 have been interpreted as dependent from Claim 1.

#### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-5, 8, 9 and 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Yokoi (WO 03/099944 as translated by US 2005/0113485), cited by the Applicant.

Yokoi teaches flaky particles suitable for using in cosmetic compositions comprising porous mother particles (e.g. silicone dioxide) and microparticles (e.g. titanium dioxide or zinc oxide) dispersed therein. See US 2005/0113485 @ Abstract;

[0009], [0015]-[0016]. The flaky mother particles have a mean particle size of 5-500 microns, a mean thickness of 0.1-5 microns and a mean aspect ratio of 5-300. See [0013]. Yokoi teaches cosmetic compositions comprising said particles and other conventional cosmetic ingredients, including organic and inorganic particles such as nylon powder, polyethylene powders, polystyrene powders, etc. See [0030]-[0031]; [0036]; Examples.

Thus, Yokoi teaches each and every limitation of Claims 1-5, 8, 9 and 11-14.

4. Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.

5. Claims 1-5, 8, 9, 13 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Kadokura et al. (EP 268 938), cited by the Applicant.

Kadokura et al. teach cosmetic compositions such as make-up formulations comprising a lamina comprising a matrix substance (e.g. silicon dioxide) and a finely divided metal or metal compound dispersed therein (e.g. titanium dioxide, zinc oxide, silver powder, etc.). See p. 2, lines 36-45, 56-58; p. 3, lines 1-49; p. 5, lines 25-29; p. 9, Example 10. The average thickness of the lamina is 0.1-5 microns, the average size is 1-500 microns and the aspect ratio is 3-100. See p. 4, line 53 – p. 5, line 5.

Thus, Kadokura et al. teach each and every limitation of Claims 1-5, 8, 9, 13 and 14.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kadokura et al. (EP 268 938).

Kadokura et al. applied as above. With respect to Claim 7, the reference teaches nanoparticles of metal or metal compounds such as silver powder, titanium dioxide and other substance, dispersed within the matrix particles (see above), but does not explicitly teach the claimed "combination of silver nanoparticles and titanium dioxide nanoparticles". However, making a combination of the disclosed compounds is obvious modification of the prior art and within the skill of the ordinary practitioner. One having ordinary skill in the art would have been motivated to do this to obtain the desired UV screening ability of the lamina.

With respect to Claim 10, the reference does not teach the claimed oil absorbability of the particles. However, since the particles of Kadokura et al. are porous and are used in skin care formulations such as face powder and foundations, it would have been *prima facie* obvious to one having ordinary skill in the art at the time the invention was made to adjust the oil absorbability of the particles. One having

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ordinary skill in the art would have been motivated to do this to obtain a mattifying effect of the formulations.

8. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kadokura et al. (EP 268 938) in view of Reinehr et al. (WO 01/43714).

Kadokura et al. applied as above. Kadokura et al. does not teach the fluorescent substances of Claim 6. However, Reinehr et al. teach using fluorescent substances of the instant claim in UV protecting skin care compositions. See Abstract; pp. 1-11. The fluorescent substances are used to lighten the skin, to protect the skin against UV radiation and to improve the appearance of cosmetic formulations. See pp. 1, 17. Therefore, it would have been *prima facie* obvious to one having ordinary skill in the art at the time the invention was made to modify the particles of Kadokura et al. such that to use fluorescent substances in addition to or instead of metal oxides dispersed in the matrix. One having ordinary skill in the art would have been motivated to do this to obtain UV protective and skin lightening effect as well as to improve the appearance of cosmetic formulations as suggested by Reinehr et al.

9. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kadokura et al. (EP 268 938) in view of Mongiat et al. (US 7,101,536).

Kadokura et al. applied as above. Kadokura et al. does not teach the spherical powder of Claims 11 and 12. However, Mongiat et al. teach using spherical powders of the instant claims as SPF enhancers in UV protective compositions. See col. 31, lines 40-47. An additional beneficial effect provided by some spherical powders is a soft feel

during spreading and skin mattifying. See col. 31, lines 50-55. Therefore, it would have been *prima facie* obvious to one having ordinary skill in the art at the time the invention was made to modify the UV protective compositions of Kadokura et al. such that to use spherical powders. One having ordinary skill in the art would have been motivated to do this to obtain better UV protection as well as to improve the skin feel and mattifying properties of cosmetic formulations as suggested by Mongiat et al.

### ***Conclusion***

10. No claims are allowed at this time.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lamm whose telephone number is (571) 272-0618. The examiner can normally be reached on Mon-Fri from 11am to 7pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, can be reached at (571) 272-0629.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair->

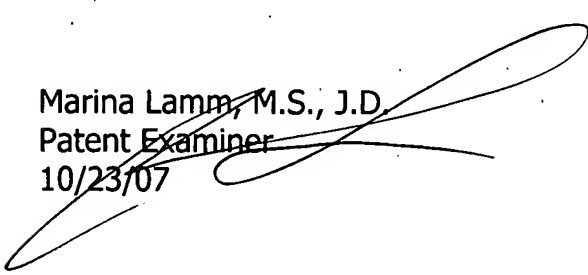
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contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Marina Lamm, M.S., J.D.  
Patent Examiner  
10/23/07



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